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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/878,743	06/11/2001	John E. Linville	HILB / 624C2	4326

26875 7590 04/21/2004

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EXAMINER

THEISEN, MARY LYNN F

ART UNIT	PAPER NUMBER
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1732

DATE MAILED: 04/21/2004

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 04162004

Application Number: 09/878,743
Filing Date: June 11, 2001
Appellant(s): LINVILLE ET AL.

Wayne L. Jacobs
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed December 8, 2003.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is incorrect.

The amendment after final rejection filed on December 12, 2003 has been entered. This amendment was filed after the Appeal Brief.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

The appellant's statement in the brief that certain claims do not stand or fall together is not agreed with because the Appellant has not explained why the claims are believed to be separately patentable.

(8) Claims Appealed

A substantially correct copy of appealed claim 35 appears on pages 14-15 of the Appendix to the appellant's brief. The minor errors are as follows: at line 6, "the other" should read —one—as per the Amendment After Final of December 12, 2003.

(9) Prior Art of Record

1,507,957	Edwards	9-1924
4,730,370	Elder	3-1988
4,610,900	Nishibori	9-1986

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 21, 22, 23 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Edwards in view of Elder and Nishibori.

Edwards is directed to molding separately a casket and lid using a compression mold (lines 39-41 and 44-45). The molds are formed to give the finished piece the desired shape (lines 42-44). The casket is made of cellulosic material, e.g. wood pulp, rice straw, paper pulp (lines 19-22). Elder shows a casket lid having a crown, pie, rim and header. It would have been obvious to one of ordinary skill in the art to use the method of Edwards to form a casket lid with a pie, crown, rim and header because it is a conventional shape for casket lids as evidenced by Elder and Edwards indicates that the molds may be shaped into desired shapes (lines 42-44). Nishibori is directed to compression molding cellulosic material (resin and wood chips or pulp, column 2, lines 27-28) into any shape. The product may have a wood grain. See column 5, lines 18-

34. It would have been obvious to one of ordinary skill in the art to form a wood grain on the casket of Edwards because Edwards indicates that artistic beauty can be had by forming the molds to give a desired result and Nishibori shows that molds can be shaped to provide a wood grain.

(11) *Response to Argument*

Appellants contend that there is no motivation to combine the references. This is incorrect. The motivation comes from Edwards. Edwards clearly indicates that the molds can be varied in shape to provide a desired artistic beauty. When molding casket lids one of ordinary skill in the art would consider the shapes of other casket lids in deciding what shape to make the casket lid. Elder clearly shows the shape of Appellants' claimed casket lid. It is not unreasonable to conclude that one of ordinary skill in the art when making a casket lid would make the casket lid in a known shape for casket lids.

Appellants dispute that the combination of the references is knowledge generally available to one of ordinary skill in the art to which the claimed invention pertains. It is assumed that one of ordinary skill in the art has knowledge of the art to which their invention pertains. That is to say, if one's invention is a molded casket lid, they would have knowledge of casket lids and molding. All of the references relied upon are directed to caskets and/or molding. It is therefore assumed that one of ordinary skill would have knowledge of the references. It is also noted that the combination of references being knowledge generally available to one of ordinary skill in the art to which the claimed invention pertains is not the standard of patentability. Patentability is

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determined on the basis of whether the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains. Obviousness is based on the factual inquiries set forth in **Graham v. John Deere Co.**, 148 USPQ 459 (1966), namely 1) determining the scope and contents of the prior art, 2) ascertaining the differences between the prior art and the claims at issue, 3) resolving the level of ordinary skill in the pertinent art, and 4) considering objective evidence present in the application indicating obviousness or non-obviousness. In the present application the scope and content of the prior art as represented by Edwards, a casket lid molded as a one-piece unitary structure. The difference between Edwards and independent claims 21 and 35 is that Edwards lacks the claimed shape of the lid. The ordinary skill in the art is not high and there is no objective evidence of non-obviousness. The claimed invention would have been obvious to a person of ordinary skill in the art at the time the invention was made because Elder shows the claimed lid shape. The person of ordinary skill would have been motivated to change the shape to the known lid shape of Elder because Edwards provides reason to change the mold shape.

For the above reasons, it is believed that the rejections should be sustained.

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Respectfully submitted,

Mary Lynn Theisen
Mary Lynn F. Theisen

Primary Examiner

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mlt

April 16, 2004

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